

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 47 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

JAGDISH PITAMBAR CHAMAR

Versus

STATE OF GUJARAT

Appearance:

MR MG NAGARKAR for Petitioner

Mr. AJ Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/03/98

ORAL JUDGEMENT

Rule. Learned APP Mr.A.J. Desai waives service of rule on behalf of respondent State. By consent of the learned advocates, the matter is finally heard.

2. The petitioner has challenged the judgment and order passed by the learned Additional Sessions Judge, Ahmedabad (Rural) at Mirzapur, District Ahmedabad, in the

proceedings of Criminal Appeal No. 23 of 1997, whereby learned Additional Sessions Judge has rejected the Appeal preferred by the present petitioner against the conviction and sentence imposed in the proceedings of Criminal Case No. 282 of 1996 decided by JMFC (Railway), Viramgam, vide judgment and order dated 30th September, 1997. That the present petitioner is convicted for the offence made punishable under Section 379 of the I.P.C. and is sentenced to undergo simple imprisonment for nine months.

3. As per the prosecution case, the incident had occurred on 6.4.1996 at about 1300 hours when the original complainant - the informant Ramesh Shivilal Koli was travelling in a local train from Ahmedabad to Surendranagar. That said train had arrived at Viramgam Railway Station at about 1300 hours, the complainant Ramesh Shivilal Koli had got down from the train for drinking water, and in the meanwhile, he was pushed by the accused after picking up his pocket on the platform and accused had started running amongst the passengers. That the complainant persuaded the accused shouting behind him and the Railway Police Staff, who was present on the platform, had chased the accused and arrested him with muddamal. That on search of the accused, a railway pass of the complainant - Ramesh Shivilal Koli along with currency notes were found from the possession of the accused thereby panchnama was drawn and accused was chargesheeted. That the accused was tried for having committed the offence punishable under Section 379 of the IPC by Judicial Magistrate First Class (Railway), Viramgam, and vide judgment and order dated 30.9.1997, as stated hereinabove, the accused was convicted and was sentenced to undergo simple imprisonment for nine months. That the accused had preferred Criminal Appeal No. 23 of 1997, in the court of Sessions Judge, Ahmedabad, (Rural), District Ahmedabad, which was heard and decided by the learned Additional Sessions Judge vide impugned Order dated 29th December, 1997.

4. Mr. M.G. Nagarkar, learned Advocate appearing for the petitioner has submitted that the trial court as well as the appellate court had committed a grave error by convicting the accused on the evidence of police witnesses. That as per the record, except Atulkumar Vasudev Joshi, the panch witness and complainant Ramesh Shivilal Koli, all others are police witnesses and there is no independent witness though many persons were present at the time of incident on the railway platform. It is further submitted on behalf of the petitioner that during the trial, the prosecution failed to produce the

original panchnama . That there are contradictions in the version deposed by complainant and other witnesses, the court has failed to appreciate the evidence.

5. I have carefully gone through the judgment and order of the trial court, which is produced on record vide running pages 1 to 9 of the compilation and also the judgment of the Appellate Court, which is produced at page 10 to 18 of the compilation. In my opinion, there is no jurisdictional error nor there is any procedural irregularity which has resulted into miscarriage of justice. That the trial court as well as appellate court has analysed the material produced on record and has appreciated the fact that accused was caught red handed and from the custody of the accused, the railway pass of the complainant along with currency notes were found. That the complainant has identified the railway pass and the fact that panch witness Atulkumar Vasudev Joshi did not support the case of the prosecution during his deposition. However, the trial court has appreciated the material as the muddamal articles have been identified by the complainant himself and was recovered from the possession of the accused in his presence. Under the circumstances, even if, original panchnama could not be produced on record and copy that was showed to the panch, that cannot be said to be a vital defect on the part of prosecution, whereby conviction could be set aside and accused could be acquitted.

6. The facts and circumstances apparent from the record directly connect the accused to the commission of the offence and learned JMFC has rightly convicted the accused and has awarded sentence of nine months. It may be noted that during the statement the accused himself has admitted that he had undergone imprisonment in similar case prior to the incident and thereby considering the character and antecedent of the accused in the nature of offence committed by him, the statement made on behalf of the petitioner that trial court as well as lower appellate court has failed to consider the aspect of probation to be given to the accused who is of an young age, has no merits.

7. On the basis of the above stated discussion, I do not find any reason to interfere with the concurrent findings of facts reached by the trial court as well as lower appellate court and the reasons assigned to petitioner's conviction and sentence imposed. Hence, the present Revision Application fails and deserves to be rejected and the same stands disposed of as rejected. Rule is discharged with no order as to costs.

p.n.nair